IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

APPEAL FROM ORDER NO. 87 OF 2005.

The University of Mumbai. ... Appellant.

vs.

The Brihanmumbai Municipal
Corporation and others. ... Respondents.

Mr.R.D'Souza with R.A.Rodrigues for the Appellant.

Ms.Geeta Joglekar for the B.M.C.

Ms.Geeta Mulekar, A.G.P. for Respondent Nos.2 & 3.

Mr.Prashant Beri for Respondent No.4.

CORAM: A.S. Oka, J.

DATED: 1st March 2005.

P.C. :

. Heard learned counsel for the Appellant and learned counsel for the respondent No.4.

2. The order impugned in this appeal is passed on Notice of Motion No.4009 of 2003 taken out in S.C.Suit No.4885 of 2003. The prayer in the notice of motion was for temporary injunction restraining the respondents from taking over/ using or constructing any road through the Appellant's land. It is not in dispute between the parties that the road is already constructed after the impugned order was passed.

3. It is also brought to my notice that the main suit is dismissed for default on 3rd February, 2005 and the notice of motion taken out for restoration is pending.

4. The construction of road is already completed. No purpose will be served by entertaining this appeal. It is for the Appellant to take out appropriate proceeding in this behalf.

5. Subject to the observations made above, the appeal is dismissed with no order as to costs. It is made clear that the suit, if restored, will be decided on its own merits without being influenced by the tentative findings recorded in the impugned order.

6. All the concerned to act on an authenticated copy of this order.

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